

### REMARKS

Reconsideration and allowance are respectfully requested.

Claims 1-2, 6-18 and 30-40 are pending. Claims 19-29 are cancelled without prejudice or disclaimer.

Entry of the amendments is requested to address the Examiner's new rejection on page 3 of the Office Action. They could not be earlier presented because the objection was initially raised in the previous Action ("Applicant's arguments regarding the previous rejection are noted; however, this is a different rejection, based upon the new combination of mutations now claimed"). Cancellation of the claims will reduce the issues on appeal.

#### *Double Patenting*

Claims 19-29 were rejected on the ground of nonstatutory obviousness-type double patenting over claims 21-39 of U.S. Patent 6,441,817. Applicants traverse because the cancellation of claims 19-29 moots this rejection.

Claims 1-2, 6-18 and 30-40 were provisionally rejected on the ground of non-statutory obviousness-type double patenting as being allegedly unpatentable over claim 44 of allowed Application No. 10/273,348. Applicants traverse because the attached terminal disclaimer moots this rejection. It is understood that the allowed application is projected to issue on June 20, 2006 as U.S. Patent 7,063,851.

It should be noted that the filing of a terminal disclaimer to overcome a rejection based on non-statutory double patenting is not an admission that the rejection was proper. See *Quad Environmental Technologies Corp. v. Union Sanitary District*, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991). The Court stated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Thus, submission of a terminal disclaimer is not an admission that the pending claims are obvious over the claims of U.S. Patent 7,063,851.

Withdrawal of the double patenting rejections is requested.

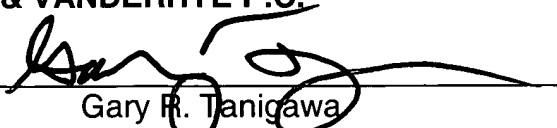
*Conclusion*

Having fully responded to all of the pending objections and rejections contained in this Office Action, Applicants submit that the claims are in condition for allowance and earnestly solicit an early Notice to that effect. The Examiner is invited to contact the undersigned if any further information is required.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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